

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB's 1852, 1628, & 2344

SPONSOR: Education Committee and Senators Diaz de la Portilla, Wilson, and Villalobos

SUBJECT: Residency Status for Tuition Purposes

DATE: April 15, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/Combined CS</u>
2.	<u> </u>	<u> </u>	<u>AED</u>	<u> </u>
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4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
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I. Summary:

This committee substitute would classify a student attending a public postsecondary institution as a resident for tuition purposes if the student has resided in the state for at least three consecutive years immediately preceding the date the student received a Florida high school diploma or the equivalent, has attended a Florida high school for at least three consecutive school years during that time, and the student files an affidavit stating that the student will file an application for permanent residency at the earliest opportunity the student is eligible. The committee substitute excludes nonimmigrant aliens, within the meaning of 8 U.S.C. s. 1101(a)(15), from qualifying for residency for tuition purposes under this new criterion.

The committee substitute provides that active duty members of a foreign nation's military serving as liaison officers and residing or stationed in this state, and their spouses and dependent children, attending a public postsecondary institution within 50 miles of the military establishment where they are stationed, are residents for tuition purposes.

This committee substitute amends s. 1009.21, F.S.

II. Present Situation:

Section 1009.21, F.S., requires students to be classified as residents or nonresidents for the purposes of assessing tuition in the community colleges and state universities. Classification of a student as a resident for tuition purposes is a threshold eligibility criteria for participation in certain financial assistance programs such as the Florida Bright Futures Scholarship Program, the Florida Student Assistance Grant Program, the Florida Resident Access Grant Program, and other state-funded scholarships.

A student may qualify as a resident for tuition purposes if the student, or his or her parents if the individual is a dependent child, has established and maintained legal residence in the state for at least 12 months immediately prior to the student's qualification. Section 1009.21, F.S., provides additional methods for qualifying for residency for tuition purposes, but these methods, for the most part, require legal residence of some duration in the state. Undocumented aliens, with certain exceptions as provided in federal law, may not establish legal residence in the state for tuition purposes because their residency in the state is in violation of federal law as they have not been properly admitted into the United States. Undocumented aliens are accordingly classified as nonresidents for tuition purposes. Many of these undocumented aliens attend Florida high schools and obtain a high school diploma or the equivalent as the state may not bar these individuals from attending elementary, middle, or secondary schools. See Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). Due to the dramatically increased cost of attending a public postsecondary institution as a nonresident these aliens are more likely not to obtain needed postsecondary skills or credentials to obtain higher paying jobs.

The nature of the undocumented status of these individuals leaves the state with no accurate numbers to use as reliable estimates. Moreover, the school districts, pursuant to a consent decree, are precluded from collecting data on undocumented aliens that are attending public schools. See League of United Latin American Citizens v. Florida Board of Education, Case No. 90-1913, (S.D. Fla. 1990).

8 U.S.C. s. 1623, prohibits any alien, who is unlawfully present in the United States, from receiving any postsecondary education benefit on the basis of residence in a state unless a U.S. citizen or national is eligible for such benefit in the same amount, duration, and scope. However, other states, such as Texas, California, and Utah have enacted varying laws authorizing certain undocumented aliens to qualify for certain financial aid programs.

Nonimmigrant aliens, as defined in 8 U.S.C. s. 1101(a)(15), are aliens lawfully admitted into the U.S. but whose duration of stay is set forth in the applicable visa under which admittance is granted. Most nonimmigrant visas, but not all, require the holder of the visa to intend to return to the nonimmigrant's country of residence upon termination of the visa. Students under an F visa or an M visa are required to intend to return to their country of residence. If a nonimmigrant stays beyond the limitations of the visa, the nonimmigrant is no longer lawfully within the U.S. and may be subject to deportation.

Section 1009.21(10)(j), F.S., authorizes active duty members of the Canadian military residing or stationed in the state, and their spouses and dependent children, to pay in-state tuition at state universities and community colleges within 50 miles of where they are stationed.

There are three U.S. military commands in the state that have liaison officers from foreign nations of their staffs: (1) Joint Interagency Task Force East (Key West), (2) United States Central Command (Tampa), and (3) United States Southern Command (Miami). Currently, 12 foreign liaison officers are assigned to the Joint Interagency Task Force East. These officers serve two to three years and nearly all bring their dependents to the state. There are 345 liaison officers assigned to the United States Central Command. Most of the liaison officers serve a shorter tour ranging from 90 days to one year. Six liaison officers are assigned to the United States Southern Command. The liaison officers serve two to three year tours and are generally

accompanied by their families. The liaison officers do not qualify as residents for tuition purposes unless they otherwise meet residence criteria.

III. Effect of Proposed Changes:

The committee substitute classifies a student as a resident for tuition purposes if the student has resided in the state for at least three consecutive years immediately preceding the date the student received a Florida high school degree or the equivalent, has attended a Florida high school for at least three consecutive years during such time, and has provided an affidavit to a community college or a state university that the student will file an application for permanent residency at the earliest opportunity the student is eligible. The committee substitute specifically excludes nonimmigrant aliens, as defined in 8 U.S.C. s. 1101(a)(15), from meeting the new eligibility requirements.

The committee substitute authorizes any student, other than nonimmigrant students, to classify as a resident for tuition purposes if the student meets certain criteria. Accordingly, residents of other states may qualify for residency for tuition purposes if they otherwise meet the eligibility criteria.

The affidavit requirement would not create a substantial burden for a student to qualify for residency for tuition purposes. Most undocumented aliens, absent a change in federal law or a grant of amnesty, would not qualify for permanent residency.

The committee substitute classifies active duty members of a foreign nation's military serving as liaison officers and residing or stationed in this state, and their spouses and dependent children, attending a public postsecondary institution within 50 miles of the military establishment where they are stationed, as residents for tuition purposes.

The committee substitute has an effective date of July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The U.S. Constitution provides the Federal Government with preeminent power over the regulation of aliens within the U.S. See Takahaski v. Fish & Game Commission, 334 U.S. 410, 418-420, 68 S.Ct. 1138, 1142-1143, 92 L.Ed. 1478 (1948). Any state action

that imposes discriminatory burdens upon the entrance or residence of aliens lawfully admitted into the U.S. conflicts with the Supremacy Clause of the U.S. Constitution. See id. The committee substitute specifically excludes certain nonimmigrant aliens from meeting eligibility requirements for establishing residency for tuition purposes. In Toll v. Moreno, 458 U.S. 1, 17, 102 S.Ct. 2977, 2986, 73 L.Ed.2d 563 (1982), a Maryland statute was struck down on Supremacy Clause concerns when the law categorically prohibited G-4 nonimmigrant aliens from acquiring in-state status for tuition purposes. G-4 nonimmigrant visa holders are not required to have intent to return to their country of residence. Unlike the Maryland law, the committee substitute does not categorically prohibit a nonimmigrant alien from qualifying for residency, only that a nonimmigrant may not qualify under the new criterion. There still remains a concern that the committee substitute may be challenged for the limitation on the ability of lawfully admitted nonimmigrant aliens from obtaining in-state tuition status.

The committee substitute authorizes any student to qualify for residency for tuition purposes if the student meets specified criteria. Accordingly, 8 U.S.C. s. 1623, which bars any alien, who is unlawfully present in the United States, from receiving any postsecondary education benefit on the basis of residence in the state unless a U.S. citizen or national is eligible for such benefit in the same amount, duration, and scope, would not be applicable.

It may be alleged that the committee substitute discriminates against nonresident U.S. citizens in favor of non-U.S. citizens. However, nonresidency has not been determined to be suspect class for purposes of the Equal Protection clause of the U.S. Constitution, and the state would likely only be required to demonstrate that the committee substitute bears a rational relationship to the goal of providing greater access to postsecondary education within the state. Moreover, education is not a fundamental right for purposes of the Privileges and Immunities Clause of the U.S. Constitution, and a state would therefore be able to constitutionally discriminate against nonresidents with respect to access to its postsecondary education institutions.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is anticipated that certain individuals would qualify for subsidized tuition as a state resident; however, the precise impact is indeterminable.

C. Government Sector Impact:

The fiscal impact of the committee substitute is indeterminate as the state does not possess any reliable figures indicating the number of students that would qualify for the subsidized tuition as a state resident. The Florida Immigrant Advocacy Center estimates

that number of students could be as high as 1,045 for the state universities and 1,780 for the public community colleges.

Given the indeterminate number of eligible students, the fiscal impact and additional regulatory burden on community colleges and state universities in collecting and processing the affidavits is not readily ascertainable.

The expansion of the committee substitute to include foreign liaison officers creates an indeterminate fiscal impact. There are approximately 363 liaison officers currently serving in the state. The number of dependents is not known at this time. Moreover, the liaison officers serve anywhere from 90 days to three years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.